
1. Why a Digital Administration Code?

The regulatory framework at the dawn of the third millennium was sufficiently advanced with respect to administrative “paperwork” procedures and, with reference to the application of computer technologies to administrative procedures, developed only with respect to single aspects of said procedures.

Providing computerized administrative procedures with a central role in the regulatory system constitutes a fundamental step in order to proceed with the computerization of public administration activities.

An instrument such as the Code made it possible, according to a systematic order, to collect the existing regulations on the use of technology in public administrations, integrating them with ulterior provisions necessary to define the regulatory framework needed to perform administrative activities utilizing digital and communication technologies.

The Code is structured with the first part dealing with general organizational principles and regulations and is then divided into a series of sections dedicated to individual situations in administrative actions examined and conducted with the use of ICT technologies: from the creation of a document to signing to protocol; these three elements form the basis of the activity which then proceeds to handle the document, that is to treating it within the context of the procedure, to maintaining it over time and to transmitting it, whether in dealing with the other public administrations interested in the procedure or in relations with private individuals who are the receivers/beneficiaries of the procedure.
2. **Organizing e-Government in public administrations**

The possibilities arising from the development of ICT in public administration activities facilitate the exchange of data among public administrations and the providing of services to users. This important phenomenon is known as *e-Government* that is a technical-organizational innovation process in public administration, aimed at facilitating “the integration of production procedures and providing services both inside and outside the public administration”.

In order to realize the needed integration of these procedures, working methods must be defined that exchange data and services among the various administrations. In addition, it should be pointed out that, save rare cases, an administrative procedure involves several administrations, with the requirement that common working regulations in the administrations involved be defined.

The term *governance* is intended to refer to the application of public action models in the context of participation and transparency in public management decisions. In brief, this is an organizational model of the policy realized through negotiation mechanisms.

The governance models that are being used in our country are transforming the public decision-making system and especially the public administration decision-making system, from a process in which regulations, procedures and attitudes cascade down through instruments of varying coercing powers, in a process in which the principles of participation, responsibility, effectiveness and coherence are concretely applied. As has been correctly observed: “the evolution of the regulatory framework on the subject of *e-Government* must be considered within the context of an institutional system that ever more frequently involves several levels of government”.

Since the Digital Administration Code cannot define organizational aspects relating to individual administrations inasmuch as this pertains solely to the individual administrations, it was decided to identify the various functions and to establish that they be carried out by a specific single center; no longer are the functions of the person in charge of the computer systems disjointed from the other connected functions but rather a single office organized according to the preferences of each administration but in any case a single subject to which the relative functions are attributed.

With a view to realize effective governance structures a .... (Article 14.3-bis) was envisaged and a permanent conference for technological innovation, to which the managers of the above-mentioned structures belong (Article 18.2).

5. **Creating and signing digital documents.**
5.1 Creating computer documents. The analysis of an administrative procedure carried out digitally must necessarily start with the creation of a digital document as an act of office or of an initiative that is appropriate for implementing the procedure.

In defining an administrative document, Article 22 of Law no. 241 dated August 7, 1990 envisaged a reference, albeit minimum, to the use of digital technologies, attributing legal value to “each graphic, photo cinematographic, electromagnetic representation”. Clearly, this was a definition distinguished by the use of specific technologies.

In a different way the Code provides a broader definition of a digital document that at the same time more closely reflects the technological developments of recent years, defining digital document “the representation of acts, facts or legally relevant data”.

Moreover, the provision states that the presence of these requisites satisfies the regulations that require the written form, as a requisite of the validity of an act.

In affirming that a document satisfies the written form, the regulation places the accent on the difference between a written document and a signed document. Should an unsigned digital document comply with all the above-mentioned technological conditions, it has the same value that Article 2712 (Italian Civil Code) attributes to mechanical reproductions, such as photocopies and similar reproductions, that is full proof of the facts and of the items represented, if the person against whom they are produced does not disclaim conformity to said facts or items.

5.2 Signature. The situation changes if a document is signed. In this case, a distinction must be made as to which of the various types of signature envisaged by current legislation was used to sign the document.

European regulations and consequently Italian regulations provide for more than one type of electronic signature and in particular electronic signatures and digital signatures. The former is the whole of the data attached or connected by logical association to other electronic data, utilized as a method for digital authentication. Instead, a digital signature is a particular type of electronic signature equipped with special security techniques and the fact that its issuance was effectuated by the certifier of electronic signatures, that is by an authorized subject.

Legal value of the two signatures
6. Treating and maintaining documents.

The subsequent phase in the digital procedure outlined in the regulations contained in the Code deals with treating documents that is the process of treating a document within the administration.

Also commonly known as back office, the treatment process commences with the registration of the document, followed by sending the document to those who participate in the procedure, to whom in varying degrees the preparation, signing, registering as outgoing, transmitting and saving ulterior documents is entrusted.

In light of the regulations on digital protocol, these operations, realized in hard copies, can be realized utilizing ICT, by means of maintaining a protocol/registration system aimed at locating and retrieving the document filed as well as access to documents on the part of public administrations and interested private parties.

This is not just simply registering documents but by means of the functions allowed by the technology in its broadest meaning the digital protocol also includes procedural aspects such as locating, finding and treating documents in the broadest meaning of digital treatment of documents.

In this technical/operating outlook, the Code regulations define the possibilities of digitalized management of the procedure.

An initial form of management of the administrative digital procedure is represented by the possibility of utilizing technological instruments as support in carrying out the procedure, effectuating the same procedural steps that characterize the administrative procedure carried out with hard copies. The use of these instruments is coupled with, supporting it, the more traditional carrying out of the administrative procedure and the digital mode makes it possible to effectuate the same operations required in the traditional procedure.

The regulations heretofore examined enable us to carry out the entire procedure with the support of technology. In addition to the digitalization of the individual procedural activities (document, signature, protocol, filing, transmission), the regulation envisages participation and access to the acts of the procedure as well as the possibility of effectuating the conference of the services by availing itself of the available digital instruments.

Utilizing a second opportunity for digitalization in the administrative computer procedure, the technologies available to each administration are not utilized as “supporting” instruments for the procedures carried out in card copy but as elements implementing the procedural phase. In this sense reference is made to applied cooperation, which is the means to interact between the digital systems of public administrations to allow integration of information and the carrying out of
administrative procedures. These are administrative procedures carried out directly by the computers that, utilizing the data in their possession, are able to carry out the entire administrative procedure also interacting with the data in the possession of other administrations.

Thus, there will no longer be a procedure carried out by public administration operators who, although availing themselves of the technologies described for the acquisition of preliminary elements, themselves handle the data acquired, with the sole support of ICT. It is precisely because ICT applications to administrative actions of more than one public subjects are involved that only envisaging technological regulations is insufficient.

At the present time in order to ensure that the exchange of data between administrations has legal value, exchanges effectuated by the digital systems in compliance with the procedures for applied cooperation with methods that differ from the traditional hard copy mailings, the interested public administrations have necessarily had to stipulate specific agreements. The technological characteristics of the public connectivity system, also in terms of quality and security, instead make it possible to dictate a principle based on which the exchange of data effectuated, thanks to the technologies of the system itself, produces the same legal effects on the administrative procedure as the normal sending of a document. In order to attribute legal value to sending a document, the provision establishes the priority that the moment of sending and the moment of receiving must be apparent as well as that the integrity of the document be guaranteed.

Another aspect connected to treatment is that related to the conservation of the computer documents, disciplined in Articles 43 and 44. Conservation is a particularly important and delicate aspect since, probably for the first time in the history of mankind and excluding forms of written codes, in order to read a document the use of visual perception does not suffice but instead an instrument must be utilized that makes it possible to render said document perceptible to the human eye.

In light of these considerations, the principles contained in the Code that regulate conservation are linked to the legibility of the document and to the survival over time of the document.

In order to render these principles applicable, technical regulations need to be established that ensure compliance with said principles, such as the obligation to transfer the documents to be maintained onto updated supports.

With respect to the long-term conservation of computer documents, that which characterizes the digital conservation, but more in general the use of ICT with respect to the traditional hard copies, is constituted by the impossibility of reading the documents without the use of a technological support.
Consequently, conserving the document in such a manner as to maintain it identical to the original and render it always legible is an indispensable factor.

7. Transmission.

7.1 Electronic mail. Having covered the creation, signing, registering, treatment and conservation of the digital document, the Code disciplines the transmission of the digital document, that is the methods by which documents can be sent to another organism or to another administration involved in the proceeding or to the end recipient of said proceeding.

The Code established a primary principle aimed at attributing legal value to the digital transmission of documents “effectuated with any telecommunications or computer means”.

This is another case of the affirmation of a neutral legal principle to the technology used; independently from the electronic instrument, the transmission is valid if it corresponds to the legal requisites set by the regulation.

In order to attribute legal value to the transmission, the regulation (Article 45.2) identified the single moments of the transmission, attributing the specific value necessary to the effectuation of the entire process to each of them. While there is no difference to the aspect of the mailing between hard copies and electronic copies, the constituting moment is identified in the delivery to the carrier (for hard copies) and to the handler (for electronic mail).

The regulation establishes that the document is considered as delivered when it is placed in storage, to which the recipient has access to “download” the document.

In public administrations, digital transmission of documents generally takes place by means of the use of electronic mail: this is what Article 47 affirms. Certain important principles are identified by means of this provision: a specific technological method of transmission is identified in electronic mail and to this is attributed the value of ordinary transmission instrument, relegating hard copy transmission to a simple exception (par. 1).

Moreover, the regulation identifies the facts by virtue of which the transmission by electronic mail is valid (par. 2). In one case the transmission with electronic mail is valid if the document is sent and signed with a digital signature (letter a). In this case the rule is based on the legal value of the document signed with a digital signature and in the light of the particular characteristics of said signature (see par. 5.2) it also acknowledges full legal value for the purposes of the transmission. Signing with a digital signature is a sufficient element, independently of the transmission instrument used.
In a second case the transmission with electronic mail is valid if the document transmitted is endowed with the digital registration (letter b). In fact, the addition of a digitalized registration makes it possible to identify with absolute certainty the office that affixed the registration, the date it was added and the progressive chronological number, thus giving legal value to the transmission.

The third case delineated by the rule for the verification of provenance for the purposes of the validity of the communication is a residual provision: since forms of transmission can be hypothesized to which validity can be attributed even beyond that expressly specified by letters a, b, and d of Article 47, the Code refers to other rules dictated by the order and to the contents of the technical regulations in order to verify the provenance of the communications and to attribute validity for the purposes of the administrative procedure to them (letter c). By virtue of this regulation they have value and a hard copy need not follow. Fax utilized by electronic mail, as well as a simple electronic mail for which the sender can be ascertained.

7.2 Certified electronic mail. Another hypothesis based on which provenance can be verified and based on which the communication is valid is the transmission by certified electronic mail (Article 47.1.d).

Technological and legal regulations relating to certified electronic mail are contained in Presidential Decree no. 68 dated February 11, 2005. The Code merely mentions these regulations, defining certain fundamental principles.

In the first place, this is a particular electronic mail transmission system, the legal characteristics of which provide legal value to the transmission of documents produced and transmitted by means of digital instruments, that “require a mailing receipt and a return receipt” (Article 48.1).

In the second place, certified electronic mail is the equivalent of a notification by mail in those cases established by law (Article 48.2).

The working mechanism for certified electronic mail, covered in the above-indicated Presidential Decree no. 68 of 2005, was realized by resubmitting the hard copy model of the registered letter with return receipt on a computer level. The paperwork in fact requires filling in a mailing receipt at the time the subject hands over the envelope to be sent by registered mail and a return receipt that attests to the effective delivery in compliance with the law to the recipient.

Especially important in examining the regulation is the need that the digital document transmitted be made available “to the electronic address declared by the recipient”.

Contrary to what happens with a registered letter with return receipt, where in the absence of a specific recipient address the recipient’s residence is used, at the present time the law does not
provide for an institute assimilable to the computer residence. Moreover, each user could also have more than one electronic mail address, even certified. This is why it was established that for private parties intending to utilize the certified electronic mail service, the only valid address, for all legal purposes, is that expressly stated for the purposes of each proceeding with the public administrations or of each individual relation in act between private parties or between same and public administrations. Said statement is only obligatory for the declarant and may be revoked in the same manner.

Consequently, having a certified electronic mail box does not suffice but each proceeding initiated with a public administration or a relation underway with another private subject requires that the address be specifically stated. This is an example of the specific desire of the interested subject to transmit and receive documents by computer for that specific relation.

In order to send a message utilizing certified electronic mail, moreover, both the sender and the recipient must be equipped with a certified electronic mail box. This is because in order to provide services levels that ensure a certain delivery, regulations provide that said service be performed only by subjects with predetermined technical/economic requisites and that said subjects be registered in a specific list maintained by a public administration.

One aspect in particular is linked to relations between certified electronic mail and the documents signed with a digital signature: the two are complementary but not inseparable. A document that has been signed digitally can be transmitted with a simple electronic mailing and a simple document can be transmitted with a certified electronic mailing. The value of the container attributed to certified electronic mail must not be confused with the value of the contents attributed to a document signed digitally.

8. Public administration data and providing services on line

8.1 Public administration data. The description of the institutes relating to the creation, signing, filing, treatment and transmission of a computer document covers all the phases necessary to realize an administrative proceeding with digital technologies.

The analysis of the administrative proceeding in all its phases from the creation of a document to its sending to the recipient does not, however, cover the profiles relating to which digitalization must be implemented.

In order to realize these objectives, the Code establishes that the data available to each administration must be collected, conserved and made available so that the other administrations, and private parties when so authorized, may enjoy and reuse the said data. Enjoying data means
being able to utilize the data of another administration not only by viewing it but also by transferring it to its own computerized systems. Nonetheless, ownership of the data remains with the administration, both from the point of view of current regulations relating to the reutilization of documents in the public sector as well as with reference to any procedural applications that will necessarily utilize the data provided by the owner of same to have legal certainty of the data utilized.

It is often the case that the information or the whole of the information is not handled by a sole administration; this would be true of the health details of an individual, surely stored by the relevant health office, but also by a hospital, by the family doctor, etc. This is data that is homogeneous by type and content and the knowledge of which is utilizable by the public administrations involved in carrying out their institutional assignments.

In order to better utilize the data, Article 60 provides for the identification and constitution of data bases of national interest aimed at the creation of a single computerized system.

8.2 Providing services on line

Internet sites and web pages constitute the most-used methods for providing and enjoying the services offered on line. Even the public administrations, aligned to this new form of relations with users, have been updated, and have created their own sites. The different approach to innovation and the lack of common rules brought about a marked difference in the public administration web sites, in which different levels of quality in providing services can be seen.

The lawmaker’s decision in defining the minimum contents foreseen for each site takes into consideration the principles described in the Digital Administration Code in its entirety but it also takes into consideration the need to implement the current regulations on the subject of transparency and quality in the services provided to users through the use of the ICT instruments.

The Code establishes that all the principles relating to advertising and transparency that Law no. 241 establishes on hard copies also be realized for computers.

In this sense it establishes that the entire list of active electronic mail boxes be published on the sites, specifying whether these are institutional mail boxes or certified mail boxes, as well as the list of available services provided on line.

Indication of the procedures carried out and the relevant closing timeframes, as well as the indication of the offices (and the managers) tasked with each procedure.

In addition, the public data contained in the web sites of the public administrations must be made available on line free of charge and without the need for any digital identification; nonetheless
it should be pointed out that there may be data that, while produced by public administrations, is not published inasmuch as subject, for example, to Law no. 241 of 1990 or to Legislative Decree no. 196 of 2003, for which digital identification is required. In other cases, a fee may be charged for any extraordinary costs borne by the administration granting the data also in view of the provisions of the above-indicated regulations on the subject of the reutilization of information in the public sector.

One of the aspects to be taken into consideration in relation to the on line enjoyment of the services provided by public administrations is the opportunity to obtain forms as well as the list of documents required for each procedure from the public administration web sites. In this way, whether the forms can be downloaded from the administration web site and are then submitted in hard copy or whether they are filled in and sent directly on the web page, the forms must in any case also be available on line. To strengthen this principle, the regulation provides that “once twenty-four months after the date of effectiveness of the Code have elapsed, any forms that have not been published on the site cannot be requested and the relevant proceedings can also be concluded in the absence of the above-mentioned forms”. In order to correctly and promptly implement this provision, the administrations need to apply the appropriate technical rules on the subject of digital documents (time stamping, for example) which make it possible to ascertain with certainty the moment in which a given form or document requested was placed on the site. This is to avoid any disputes between the user and the administration with reference to the time of publication of the form or document requested on the site.

Another aspect is the publication on the sites of regulatory and administrative acts that produce the legal effects of the constituting advertising only in those cases and according to the rules specifically set out by law, not producing any derogatory effect of the rules currently in effect relating to constituting advertising, confirmed by the purposes of the Code which are not those of re-elaborating a legal system already contained in civil or penal regulations of the law having their historical fulfillment and effectiveness but that of foreseeing and regulating the digital or technological version for the purpose of facilitating the efficiency and effectiveness of the administrative action.

Providing services on line is not only constituted by the methods by which public administrations consent to the fruition of services on line, but is also represented by the opportunities granted to the citizen-undertaking user to interact with administrations.

For the purposes of disciplining these methods, Article 65 establishes that applications and statements may be sent to public administrations: signing them with digital signatures (letter a);
when the author is identified by means of an electronic identity card – EIC and national services card - NSC (letter b); when the author is identified by means of a pin/password (letter c).

It should however be made clear that there are differences between identification instruments such as the EIC/NSC and signatory instruments such as the digital signatures. These are two distinctly separate objects: while EIC/NSC are instruments for access to services provided on line by administrations, and not instruments for signing documents, digital signatures are not access instruments but signatory instruments.

It is clear that they can be used as complementary instruments whenever, once access is available to the services provided on line, the application or statement needs to be signed. Thus, they can easily be materially placed on a single smart-card, but under no circumstances can it be sustained that the EIC/NCS are signatory instruments or that a digital signature is an instrument for access to services provided on line.

In order to obtain services on line from a public administration it is not always necessary to sign the petition. Similarly to procedures for using bank cards, where in order to obtain certain services signing is not required, since the simple computer identification is sufficient, Article 65.1, letters b) and c), establishes that the EIC/NSC and the pin/password may be utilized as instruments for submitting applications and statements within the limits established by each administration.

9. Technical regulations

In order to reach a complete and standard application of the innovation and communication technologies in public administrations and primarily of the functions and attributions carried out by the single administrations, application of the contents of the Digital Administration Code is certainly important but the application of the technical regulations is extremely important.

This expression is intended to refer to the provisions of a technological nature that are required for carrying out the technological solutions envisaged by the regulation, including their inter-operability, that is the possibility that the various systems described can work jointly together.

Article 71 leads the system to unity, in several parts of the Code identifying the aspects in relation to which the establishing of technical regulations is necessary, at the same time entrusting the relevant regulatory power to the President of the Council of Ministers or to the Minister tasked with innovation and technology.

The provision of new technical regulations represents an important note in the legal system outlined by the Code, aimed at guaranteeing the continuing alignment between legal system and technological development.
The framework outlined was structured with a primary regulatory system distinguished by
regulations that are neutral towards technology and a flexible technical regulatory system that
rapidly adjusts to technological changes implemented.